
NSTAR Electric

)
)
)
D.T.E. 03-121

HEARING OFFICER RULING ON PETITIONS FOR LEAVE TO INTERVENE

I. INTRODUCTION

On January 16, 2004, pursuant to G.L. c. 164, § 94 and 220 C.M.R. §§ 5.00 et seq., Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (“Companies” or “NSTAR Electric”) filed for approval by the Department of Telecommunications and Energy (“Department”), tariffs designed to establish standby rates for large and medium-sized commercial and industrial customers who have their own on-site, self-generation facilities.

On February 10, 2004, the Department conducted a public hearing and procedural conference. At the procedural conference, the Hearing Officer ruled on a number of petitions for leave to intervene or participate in this proceeding. Parties were provided an opportunity to object to the petitions (Tr. at 80- 86).¹ The Companies recommended that the following petitioners be granted limited intervention status: (1) the Conservation Law Foundation, Inc. (“CLF”); (2) FuelCell Energy, Inc. (“FCE”); (3) American DG, Inc.; Aegis Energy Services, Inc.; OfficePower L.L.C.; Equity Office Properties Trust, Inc.; Northern Power Systems, Inc.; RealEnergy, Inc.; Tecogen Inc.; and Turbosteam Corporation (collectively, the “NE DG Coalition”); (4) the Solar Energy Business Association of New England (“SEBANE”); (5) UTC Power, LLC (“UTC”); (6) General Electric Company; MeadWestvaco Corporation; and Solutia, Inc. (Collectively the Western Massachusetts Industrial Customer’s Group, “WMICG”); and (7) Plug Power, Inc. (“Plug Power”). The Hearing Officer took the Companies’s recommendations under advisement (id.).²

¹ Petitions for leave to intervene were due no later than February 3, 2004. A party may answer a petition “within five days after the petitions are filed.” 220 C.M.R. §1.03(1)(d). Department procedural rules do not provide for a response to an answer to a petition for leave to intervene.

² The Companies did not oppose, and the Hearing Officer granted the following petitions;
(continued...)

II. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b). In adjudicatory proceedings,

agencies may . . . allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order (emphasis added).

G.L. c. 30A, § 10(4).

In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Tofias v Energy Facilities Siting Board, 435 Mass. 340, 346 (2001) (based on the permissive “may” in G.L. c. 30A, § 10(4), the Supreme Judicial Court has repeatedly recognized that agencies have broad discretion to grant or deny intervention); Cablevision Systems Corporation v. Department of Telecommunications and Energy, 436 Mass. 436, 439 (1998); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. 1, 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. 1, 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Id.

²(...continued)

(1) Keyspan Energy Delivery New England - limited participant status; (2) Wyeth Pharmaceutical, Inc - limited participant status; (3) Associated Industries of Massachusetts - full intervenor status; (4) the Energy Consortium - full intervenor status; (5) Fitchburg Gas and Electric Company - full intervenor status; (6) Low Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association - full intervenor status; (7) Massachusetts Electric Company - full intervenor status; (8) Western Massachusetts Electric Company - full intervenor status (Tr. at 80-86). No action was taken on the petition of the E Cubed Company, L.L.C. (id. at 83). E Cubed Company was allowed to Friday, February 13, 2004 to obtain legal counsel.

In addition, when ruling on a petition to intervene or participate, a Hearing Officer may consider, among other factors, the interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly. See, e.g. Hearing Officer's Ruling on Petitions to Intervene, D.P.U. 92-11 (1992); Hearing Officer's Ruling, D.P.U. 90-284, at 3 (April 24, 1991); Interlocutory Order on Appeal of Hearing Officer Ruling, D.P.U. 88-250 at 5,6 (March 21, 1989). The Department exercises the discretion afforded it under G.L. c. 30A, § 10 so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial and timely decision that achieves its statutory mandate. Berkshire Power Development, Inc., D.P.U. 96-104, Procedural Order (January 9, 1997).

III. RULING

A. CLF

1. CLF Petition

CLF states that it is a nonprofit, member supported organization and requests full party status to this proceeding (CLF Petition at 1). CLF states that it is substantially and specifically affected by this proceeding because its 2,700 Massachusetts members have an interest in the development of new electricity generation capacity, especially employing renewable energy technology (id.). CLF states that it has a long history of participating in Department proceedings involving energy efficiency and renewable energy resources (id.). CLF states that NSTAR Electric's standby rates will be unduly burdensome and will act as a barrier to the creation of new distributed generation (id. at 2). CLF states that it will contend that NSTAR Electric's proposed rates will act as a barrier to the creation of new distributed generation (id.).

2. Ruling

As an initial matter, for this ruling specific to CLF, and applicable to all the other petitioners, I note the broad scope of this investigation which goes beyond NSTAR Electric's specific tariff proposals. The Department is investigating issues applicable to all distribution companies. Specifically, whether: (1) the proposed standby rates ensure that customers with their own on-site, self-generation facilities pay an appropriate share of distribution system costs; (2) distribution companies should recover their costs through fixed or variable charges; (3) standby rates should reflect embedded and/or incremental costs; and (4) distribution companies should offer firm and non-firm standby service. NSTAR Electric, D.T.E. 03-121 (Notice of Public Hearing (Jan. 20, 2004)). In addition, any Department precedent

established for NSTAR Electric's proposal will affect standby rate proposals by other electric distribution companies. As such, distributed generation customers (and providers) outside of NSTAR Electric's service territory will be affected by the this proceeding.

CLF was one of the stakeholders that participated with the Distributed Generation Collaborative to submit the "Tariff to Accompany Proposed Uniform Standards for Interconnecting Distributed Generation in Massachusetts" in response to Distributed Generation, D.T.E. 02-38-A (2003).³ In light of the scope of this investigation and CLF's experience and demonstrated interest in distributed generation, I find that participation by CLF will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that the CLF has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant CLF status as a party to this proceeding.

3

The Distributed Generation Collaborative consists of distribution companies, distributed generation providers, government and quasi-governmental agencies, consumers, and public interest groups, formed pursuant to Distributed Generation, D.T.E. 02-38-A (2002). The members and participants in the Collaborative were: Aegis Energy Services; Associated Industries of Massachusetts; the Attorney General of the Commonwealth; Bill Feero; Cape Light Compact; Commonwealth of Massachusetts Division of Energy Resources; The E Cubed Company, LLC; Fitchburg Gas and Electric Company; ISO New England Inc.; Ingersoll-Rand, Inc.; KeySpan Energy Delivery (Boston Gas Company, Colonial Gas Company and Essex Gas Company each d/b/a KeySpan Energy Delivery New England); Mass Technology Park Corporation d/b/a Massachusetts Technology Collaborative; Massachusetts Electric Company; Massachusetts Energy Consumers Alliance; MeadWestvaco Corporation; National Association of Energy Service Companies; Navigant Consulting, Inc.; Northeast Energy and Commerce Association; Northeast Combined Heat and Power Initiative; NSTAR Electric; Plug Power, Inc.; Raab Associates; RealEnergy, Inc.; Solar Energy Business Association of New England; Solutia; Trigen Energy; Union of Concerned Scientists, et al. (Conservation Law Foundation, Massachusetts Public Interest Research Group); United Technologies Corporation; Western Massachusetts Electric Company; and Wyeth BioPharma.. Distributed Generation, D.T.E. 02-38-A ("Report on Proposed Uniform Standards for Interconnecting Distributed Generation in Massachusetts," at 52-56).

B. FCE

1. FCE Petition

FCE requests full intervenor status in this proceeding (FCE Petition at 1, 3). FCE states that it develops high temperature hydrogen fuel cells for clean electric power generation and has installed commercial-scale fuel cells in Massachusetts (id. at 1). FCE argues that it is substantially and specifically affected by this proceeding because the tariffs proposed by NSTAR Electric may cause FCE's projects to be charged costs well in excess of the actual costs FCE facilities would impose on the distribution system (id. at 2).

2. Ruling

In light of the scope of this investigation and FCE's experience and demonstrated interest in distributed generation, I find that participation by FCE will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that FCE has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant FCE status as a party to this proceeding.

C. NE DG Coalition

1. NE DG Coalition Petition

The NE DG Coalition states that it has existing distributed generation systems in NSTAR Electric's service territory (NE DG Coalition Petition at 5). The NE DG Coalition states that NSTAR Electric's standby proceeding will affect the development of standby rates throughout Massachusetts (id.). The NE DG Coalition adds that it has significant vested interest in the matter of whether there should be separate so-called standby rates different from otherwise applicable rates in NSTAR Electric's territory (id.).

2. Ruling

In light of the scope of this investigation and NE DG's experience and demonstrated interest in distributed generation, I find that participation by the NE DG Coalition will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that the NE DG Coalition has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant

NE DG Coalition status as a party to this proceeding.⁴

D. SEBANE

1. SEBANE Petition

SEBANE states that its member companies manufacture, develops, design and install photovoltaic ("PV") systems in New England (SEBANE Petition at 1). SEBANE states that the rates proposed by NSTAR Electric would affect the economics of on-site PV systems, influencing the market for SEBANE member companies (*id.*). SEBANE states that its experience with standby rates in other states would assist the Department in its review of the issues in this proceeding (*id.* at 2). SEBANE proposes to present evidence regarding the appropriateness of NSTAR's proposed rates for on-site PV systems (*id.* at 2).

2. Ruling

In light of the scope of this investigation and SEBANE's experience and demonstrated interest in distributed generation, I find that participation by SEBANE will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that SEBANE has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant SEBANE status as a party to this proceeding.

E. UTC

1. UTC Petition

UTC requests leave to intervene and participate in the above-captioned proceeding (UTC Petition at 1). UTC states that it is developing a range of products in the distributed generation market (*id.*). UTC states that its customers deploying distributed generation will be substantially and specifically affected by the tariffs filed by NSTAR Electric for standby rate for large commercial and industrial customers (*id.*). UTC states that it participated in the DTE's Distributed Generation Interconnection proceeding, D.T.E. 02-38 (*id.*).

⁴ I note that a named member of NE DG Coalition, Aegis Energy Services, Inc., separately filed a request to be on the service list of this proceeding. Since NE DG Coalition is a party to this proceeding, and Aegis is a member of the NE DG Coalition, I will not put Aegis on the service list.

2. Ruling

In light of the scope of this investigation, and UTC's experience and demonstrated interest in distributed generation, I find that participation by UTC will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that UTC has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant UTC status as a party to this proceeding.

F. WMICG

1. WMICG Petition

WMICG requests full intervenor status in this proceeding (WMICG Petition at 3). WMICG states that their local utility, Western Massachusetts Electric Company has a closed standby rate that is scheduled to expire on March 1, 2005 (id. at 1) WMICG argues that this proceeding will establish precedent and policy regarding standby rates which will have a direct impact on the members of WMICG (id.).

2. Ruling

In light of the scope of this investigation, and WMICG's experience and demonstrated interest in distributed generation, I find that participation by WMICG will help to develop a complete evidentiary record upon which the Department can base its decision. In addition, I find that WMICG has demonstrated that it may be substantially and specifically affected by this proceeding. Therefore, pursuant to 220 C.M.R. § 1.03, I grant WMICG status as a party to this proceeding.

G. Plug Power

1. Plug Power Petition

Plug Power requests leave to intervene and participate in this proceeding (Plug Power Petition at 1). Plug Power states that it is a designer, developer and manufacturer of on-site energy generation systems utilizing proton exchange membrane fuel cells for stationary applications (id.). Plug Power requests copies of all notices, testimony, pleadings and correspondence pertaining to this proceeding (id.).

2. Ruling

Upon review of Plug Power's petition, it was not clear the extent of participation that Plug Power is requesting in this proceeding. I grant Plug Power's request to participate as a

limited participant with the right to: (1) receive copies of all filings, pleadings, and submissions made during this investigation; (2) attend all conferences and hearings, and (3) file briefs on the issues investigated in this case.

IV. APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any affected person may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by February 18, 2004. A written response to any appeal must be filed by February 20, 2004.

Feb. 13, 2004
Date

/s/
William H. Stevens
Hearing Officer

Service: Service List

cc: Mary Cottrell, Secretary
Staff as assigned